

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 140
SERVICE OCCUPATION TAX

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AUTHORITY: Implementing the Service Occupation Tax Act [35 ILCS 115] and authorized by Section 2505-100 of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-100].

SOURCE: Adopted May 21, 1962; amended at 3 Ill. Reg. 23, p. 161, effective June 3, 1979; amended at 3 Ill. Reg. 44, p. 198, effective October 19, 1979; amended at 4 Ill. Reg. 24, pp. 526, 536 and 550, effective June 1, 1980; amended at 5 Ill. Reg. 822, effective January 2, 1981; amended at 6 Ill. Reg. 2879, 2883, 2886, 2892, 2895 and 2897, effective March 3, 1982; codified at 6 Ill. Reg. 9326; amended at 9 Ill. Reg. 7941, effective May 14, 1985; amended at 11 Ill. Reg. 14090, effective August 11, 1987; emergency amendment at 12 Ill. Reg. 14419, effective September 1, 1988, for a maximum of 150 days; emergency expired January 29, 1989; amended at 13 Ill. Reg. 9388, effective June 6, 1989; amended at 14 Ill. Reg. 262, effective January 1, 1990; amended at 14 Ill. Reg. 15480, effective September 10, 1990; amended at 15 Ill. Reg. 5834, effective April 5, 1991; amended at 18 Ill. Reg. 1550, effective January 13, 1994; amended at 20 Ill. Reg. 5379, effective March 26, 1996; amended at 20 Ill. Reg. 7008, effective May 7, 1996; amended at 20 Ill. Reg. 16211, effective December 16, 1996; amended at 24 Ill. Reg. 8125, effective May 26, 2000; emergency amendment at 25 Ill. Reg. 1811, effective January 16, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 4971, effective March 23, 2001; amended at 25 Ill. Reg. 6531, effective May 3, 2001; amended at 26 Ill. Reg. 4905, effective March 15, 2002; amended at 27 Ill. Reg. 812, effective January 3, 2003; emergency amendment at 27 Ill. Reg. 11187, effective July 1, 2003, for a maximum of 150 days; emergency expired November 27, 2003; emergency amendment at 28 Ill. Reg. 15257, effective November 3, 2004, for a maximum of 150 days; emergency expired April 1, 2005; amended at 29 Ill. Reg. 1940, effective January 24, 2005; amended at 29 Ill. Reg. 7070, effective April 26, 2005; amended at 32 Ill. Reg. 13845, effective August 11, 2008; amended at 42 Ill. Reg. 19034, effective October 4, 2018; amended at 43 Ill. Reg. 8889, effective July 30, 2019; amended at 46 Ill. Reg. 18152, effective October 25, 2022; amended at 46 Ill. Reg. 18843, effective November 1, 2022; amended at 47 Ill. Reg. 5251, effective March 21, 2023; amended at 47 Ill. Reg. 5771, effective April 4, 2023; amended at 47 Ill. Reg. _____, effective _____.

SUBPART B: DEFINITIONS

Section 140.201 General Definitions

- a) *"Cost price" means the consideration paid by the serviceman for a purchase valued in money, whether paid in money or otherwise, including cash, credits and services and shall be determined without any deduction on account of the supplier's cost of the property sold or on account of any other expense incurred*

by the supplier; but does not include charges which are added to prices by suppliers on account of the purchaser's tax liability under the Act or the Service Use Tax Act [35 ILCS 110]. Except as provided in Section 140.145(a), when a serviceman contracts out part or all of the services required in his sale of service, it shall be presumed that the cost price to the serviceman of the property transferred to him by his subcontractor is equal to 50% of the subcontractor's charges to the serviceman in the absence of proof of the consideration paid by the subcontractor for the purchase of such property. (Section 2 of the Act)

- b) "De minimis serviceman" means a serviceman whose annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% (75% in the case of servicemen transferring prescription drugs or servicemen engaged in graphic arts production) of the aggregate annual total gross receipts from all sales of service. See Section 140.105 for the method used to determine de minimis status.
- c) "Department" means the Illinois Department of Revenue.
- d) "Person" means any natural individual, firm, partnership, association, joint stock company, limited liability company, joint venture, public or private corporation, and any receiver, executor, trustee, conservator or other representative appointed by order of any court.
- e) "Sale at Retail" means "sale at retail" as defined in Section 1 of the Retailers' Occupation Tax Act [35 ILCS 120].
- f) "Sale of Service" means any transaction except:
 - 1) *a retail sale of tangible personal property taxable under the Retailers' Occupation Tax Act or under the Use Tax Act (Section 2(a) of the Act);*
 - 2) *a sale of tangible personal property for the purpose of resale made in compliance with Section 2c of the Retailers' Occupation Tax Act (Section 2(b) of the Act);*
 - 3) *a sale or transfer of tangible personal property as an incident to the rendering of service for or by any governmental body or for or by any corporation, society, association, foundation or institution organized and operated exclusively for charitable, religious or educational purposes or for or by any not-for-profit corporation, society, association, foundation, institution or organization which has no compensated officers and employees and which is organized and operated primarily for the recreation of persons 55 years of age or older. A limited liability*

company may qualify for the exemption under the Act only if the limited liability company is organized and operated exclusively for educational purposes. Effective July 1, 1987, this exception will not apply unless the entities noted above have an active exemption identification number issued by the Department (Section 2(c) of the Act);

4) ~~effective September 1, 1968, a sale or transfer of tangible personal property as an incident to the rendering of service for interstate carriers for hire for use as rolling stock moving in interstate commerce or lessors under leases of one year or longer, executed or in effect at the time of purchase, to interstate carriers for hire for use as rolling stock moving in interstate commerce, and equipment operated by a telecommunications provider, licensed as a common carrier by the Federal Communications Commission, which is permanently installed in or affixed to aircraft moving in interstate commerce. Effective August 14, 1999, motor vehicles, as defined in Section 1-146 of the Illinois Vehicle Code, trailers, as defined in Section 1-209 of the Illinois Vehicle Code, and all property purchased for the purpose of being attached to those motor vehicles or trailers as a part thereof, will qualify as rolling stock under this Section if they carry persons or property for hire in interstate commerce on 15 or more occasions in a 12-month period, in accordance with the provisions of 86 Ill. Adm. Code 130.340 (Section 2(d) of the Act);~~

45) a sale or transfer of tangible personal property as an incident to the rendering of service for owners, lessors or shippers of tangible personal property which is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce, and equipment operated by a telecommunications provider, licensed as a common carrier by the Federal Communications Commission, which is permanently installed in or affixed to aircraft moving in interstate commerce. This exemption is administered ~~Effective August 14, 1999, motor vehicles, as defined in Section 1-146 of the Illinois Vehicle Code, trailers, as defined in Section 1-209 of the Illinois Vehicle Code, and all property purchased for the purpose of being attached to those motor vehicles or trailers as a part thereof, will qualify as rolling stock under this Section if they carry persons or property for hire in interstate commerce on 15 or more occasions in a 12-month period,~~ in accordance with the provisions of 86 Ill. Adm. Code 130.340 (Section 2(d-1) and Section 2d of the Act);

56) the sale or transfer of distillation machinery and equipment, sold as a unit or kit and assembled or installed by the retailer, which machinery and equipment is certified by the user to be used only for the production of ethyl alcohol that will be used for consumption as motor fuel or as a

component of motor fuel for the personal use of such user and not subject to sale or resale (Section 2(f) of the Act);

67) a sale or transfer of machinery and equipment used primarily in the process of manufacturing or assembling, either in an existing, an expanded or a new manufacturing facility, of tangible personal property for wholesale or retail sale or lease, whether such sale or lease is made directly by the manufacturer or by some other person, whether the materials used in the process are owned by the manufacturer or some other person, or whether such sale or lease is made apart from or as an incident to the seller's engaging in a service occupation and the applicable tax is a Service Occupation Tax or Service Use Tax, rather than Retailers' Occupation Tax or Use Tax in accordance with the provisions of 86 Ill. Adm. Code 130.330 (Section 2(e) of the Act);

78) at the election of any serviceman not required to be otherwise registered as a retailer under Section 2a of the Retailers' Occupation Tax Act, made for each fiscal year sales of service in which the aggregate annual cost price of tangible personal property transferred as an incident to the sales of service is less than 35% (75% in the case of servicemen transferring prescription drugs or servicemen engaged in graphic arts production) of the aggregate annual total gross receipts from all sales of service. The purchase of such tangible personal property by the serviceman shall be subject to tax under the Retailers' Occupation Tax Act and the Use Tax Act (Section 2(g) of the Act);

89) the repairing, reconditioning or remodeling, for a common carrier by rail, of tangible personal property which belongs to such carrier for hire, and as to which such carrier receives the physical possession of the repaired, reconditioned or remodeled item of tangible personal property in Illinois, and which such carrier transports, or shares with another common carrier in the transportation of such property, out of Illinois on a standard uniform bill of lading showing the person who repaired, reconditioned or remodeled the property as the shipper or consignor of such property to a destination outside Illinois, for use outside Illinois (Section 2(d-2) of the Act);

910) a sale or transfer of tangible personal property which is produced by the seller thereof on special order in such a way as to have made the applicable tax the Service Occupation Tax or the Service Use Tax, rather than the Retailers' Occupation Tax or the Use Tax, for an interstate carrier by rail which receives the physical possession of such property in Illinois, and which transports such property, or shares with another

common carrier in the transportation of such property, out of Illinois on a standard uniform bill of lading showing the seller of the property as the shipper or consignor of such property to a destination outside Illinois, for use outside Illinois (Section 2(d-3) of the Act).

- g) "Selling price" means the consideration for a sale valued in money, whether received in money, or otherwise, including cash, credits and service, and shall be determined without any deduction on account of the serviceman's cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever, but does not include interest or finance charges that appear as separate items on the bill of sale or sales contract nor charges that are added to prices by sellers on account of the seller's duty to collect, from the purchaser, the tax that is imposed by the Act. For purposes of calculating the serviceman's tax base, the selling price shall not be less than the cost price to the serviceman of the tangible personal property transferred to the service customer.
- h) "Serviceman" means any person who is engaged in the occupation of making sales of service.
- i) "Supplier" means any person who makes sales of tangible personal property to servicemen for transfer incident to sales of service.

(Source: Amended at 47 Ill. Reg. _____, effective _____)